

United States Bankruptcy Court

MAR 22 1991

IN RE: For the NORTHERN District of IOWA

SCOTT RAY SPRAY
DEBORAH LYNN SANDERS SPRAY

BARBARA A. EVERLY, CLERK

Case No. L-90-00953W

Debtors Plaintiff
v. Defendant

Adversary Proceeding No. _____

JUDGMENT

☒ This proceeding having come on for trial or hearing before the court, the Honorable
MICHAEL J. MELLOY, United States Bankruptcy Judge, presiding, and
the issues having been duly tried or heard and a decision having been rendered.

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable
MICHAEL J. MELLOY, United States Bankruptcy Judge, and a decision
having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: Judgment entered in favor of Debtors and
against Credit Bureau Enterprises for attorney fees of \$250.00.



[Seal of the U.S. Bankruptcy Court]

Date of issuance: March 22, 1991

BARBARA A. EVERLY

Clerk of Bankruptcy Court

By: Patricia M. Swiger
Deputy Clerk

*Val. III
p. 8*

UNITED STATES . BANKRUPTCY COURT - NORTHERN DISTRICT OF IOWA
PROCEEDING MEMO

DATE: March 20, 1991 Case No. L90-00953W Chapter 7 Adv. No. _____

SCOTT RAY SPRAY

RE: DEBORAH LYNN SANDERS SPRAY Contested No. _____

APPEARANCES: For Plaintiff/Debtor Stanford Patterson

For Defendant/Movant/Creditor _____

U.S. TRUSTEE _____ CASE TRUSTEE _____

NATURE OF PROCEEDING:

____ Motion to Use Cash Collateral FILED Objection to Exemptions/Lien Avoidance

____ Disclosure Statement U.S. BANKRUPTCY COURT Pretrial/Scheduling Conference
NORTHERN DISTRICT OF IOWA

____ Confirmation of Plan MAR 22 1991 Dischargeability/Discharge Complaint

____ Motion to Dismiss BARBARA A. EVERLY, CLERK Objection to Final Report/Claims Report

____ Status Conference Motion to Assume/Reject

____ Trial XX Other Appl. for Rule to Show Cause

OUTCOME:

____ Settled: Settlement documents to be submitted within 30 days or matter will be dismissed pursuant to Local Rule 13(D).

____ Other: _____

ORDERS:

____ Taken Under Advisement _____

____ Briefs Due _____

X Judgment Entered by the Court pursuant to F.R.B.P. 9021:

*Judgment entered in favor of debtors and
against Credit Bureau Enterprises
for attorney fees of \$250.00.*

IT IS SO ORDERED

Copy to: (w/Judgment)
Stanford J. Patterson; Donna P.
Lesyshen; Credit Bureau Enterprises;
Robert W. Brinton; U. S. Trustee
this 3-22-91 ps

Michael J. DeLo
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

APR 12 1991

IN RE:

SCOTT RAY SPRAY)	CASE NO. L-90-00953W
and)	
DEBORAH LYNN SANDERS SPRAY,)	APPLICATION TO SET ASIDE ENTRY
)	OF JUDGMENT AGAINST CREDIT BUREAU
Debtors.)	ENTERPRISES

COMES NOW Credit Bureau Enterprises, Inc., by its attorney of record, Larry L. Anfinson, and hereby states to the Court as follows:

1. That as shown by the attached Affidavit executed by Mike Joblinski, the Credit Bureau Enterprises, Inc., did not have any notice or knowledge so far as the filing of the "Application for Rule to Show Cause" by the above named debtors, until receiving copies of the Judgment Entry and Proceeding Memo, both dated March 22, 1991.

2. That Credit Bureau Enterprises, Inc., has searched all appropriate files and records to see if it could locate a copy of the "Notice Setting Hearing on Application for Order to Show Cause", dated February 11, 1991, which set a hearing for March 20, 1991, at 2:00 p.m., on this Application, but has not located any such document in its records.

3. That Credit Bureau Enterprises, Inc., would state that to the best of its knowledge and belief neither it, nor any of its agents, ever received a copy of the "Notice Setting Hearing on Application for Rule to Show Cause" in the above captioned matter and therefore were not present at the time of said hearing to defend itself on the Application for Contempt.

4. That the standard operating procedure for Credit Bureau Enterprises, Inc., is to appear and defend on all claims of this nature and a claim of this nature would never simply be ignored by Credit Bureau Enterprises, Inc., since it considers this type of application as a serious matter to which there needs to be an appropriate response.

5. That Credit Bureau Enterprises, Inc., did not garnish debtor, Scott Ray Spray after the filing of bankruptcy by said debtor. The only action taken by Credit Bureau Enterprises, Inc., was a serving of a "Notice of Garnishment" on or about January 18, 1991, which was an action taken by said Credit Bureau after it had been contacted by the Black Hawk County Clerk of Court and requested to serve this Notice of Garnishment on the debtor in order to release certain funds that had been garnished from the debtor's wages in April and May, 1990.

6. That these funds had been garnished from the wages of debtor, Scott R. Spray, prior to the original bankruptcy filing by said debtor. The execution had been issued by the Black Hawk County Clerk of Court to the Sheriff of Polk County and Credit Bureau Enterprises, Inc., immediately stopped the garnishment upon receiving of the original bankruptcy filing.

7. That the funds received by the Black Hawk County Clerk from the Sheriff of Polk County simply remained at the Clerk's Office until Credit Bureau Enterprises, Inc., was requested to conclude this matter by filing the Notice of Garnishment, so that the funds that had been garnished prior to the filing of bankruptcy could be condemned, pursuant to Iowa law.

8. That the amount that had been garnished prior to the filing of the original bankruptcy petition was \$50.00 and said amount was in the possession of the Black Hawk County Clerk at the time of said bankruptcy filing. Said amount may be properly retained by Credit Bureau Enterprises, Inc., to apply toward the judgment in this case and no further collection activity was taken against the debtor after the filing of bankruptcy.

WHEREFORE, Credit Bureau Enterprises, Inc., requests that the Court set aside the judgment entered in favor of debtors, Scott Ray Spray and Deborah Lynn Sanders Spray, and against said Credit Bureau Enterprises, Inc., for attorney's fees in the amount of \$250.00, and that if the Court deems it necessary and advisable, this matter be set for hearing in order to allow said Credit Bureau Enterprises, Inc., to more fully explain its position on this matter.

RANDALL, ANFINSON & LUCE

By: 

Larry L. Anfinson

3112 Brockway Rd., P.O. Box 1287

Waterloo, IA 50704

(319) 235-9507

Attorneys for Credit Bureau Enterprises

COPY TO:

Stanford J. Patterson
616 Lafayette Street
Waterloo, IA

Donna P. Lesyshen
500 Waterloo Bldg.
Waterloo IA

Robert W. Brinton
120 Central Avenue, W.
P.O. Box 73
Clarion, IA 50525

U.S. Trustee
P.O. Box 74890
Cedar Rapids, IA 52407

PROOF OF SERVICE

The undersigned hereby certifies that
a true copy of the foregoing was

☐ personally delivered

☒ mailed

to each party or his attorney at
his last known address on the

10th day of April 1991



Copy mailed to
filing attorney

APR 12 1991 my

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
APR 12 1991

IN RE:

SCOTT RAY SPRAY
and
DEBORAH LYNN SANDERS SPRAY,

Debtors.

)
)
)
)
)

CASE NO. L-90-00953W

BARBARA A. EVERETT, CLERK

AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF BLACK HAWK)

I, Mike Joblinski, do on oath state and depose as follows:

1. That I am the Collection Supervisor for Credit Bureau Enterprises, Inc., Waterloo, Iowa.

2. That on or about December 20, 1989, a judgment was obtained against Defendant, Scott R. Spray, in the amount of \$240.78, plus Court costs in Black Hawk County Case No. 54371, in which Credit Bureau Enterprises, Inc., was Plaintiff as assignee for a Donaldson's account.

3. That an execution was issued on this judgment on or about April 11, 1990, by the Black Hawk County Clerk of Court to the Sheriff of Polk County, requesting that the wages of Defendant, Scott R. Spray, be garnished at Krause Gentle Corp., where said Scott R. Spray was employed.

4. That, pursuant to Iowa law, a "Notice of Garnishment" was sent with these execution papers to the Sheriff of Polk County and was received by said Sheriff of Polk County on or about April 16, 1990, according to the file stamp on said document in Black Hawk County Small Claim No. 54371.

5. That the execution was served upon Garnishee-Defendant, Krause Gentle Corp. on or about April 26, 1990, at their corporate headquarters in West Des Moines, Iowa, but that said Defendant, Scott R. Spray, was not served with the Notice of Garnishment at that time by the Polk County Sheriff, or any other county sheriff's office.

6. That on or about May 18, 1990, the Black Hawk County Clerk received the sum of \$50.00 from Krause Gentle Corp., as the results of the garnishment from the first paycheck following the date of garnishment on the wages of Defendant, Scott R. Spray.

7. That on or about May 24, 1990, Scott Ray Spray and Deborah Lynn Sanders Spray, filed for bankruptcy in the Northern District of Iowa.

8. That the garnishment of the wages of Defendant, Scott R. Spray, S.C. No. 54371 was stopped immediately upon receiving notice of the bankruptcy filing and no further funds were received from Krause Gentle Corp. pursuant to this execution. The Notice of Garnishment still had not been served upon Defendant, Scott R. Spray, which is necessary and essential under Iowa law in order to condemn said funds and apply any garnished funds on the judgment.

9. That on or about January 18, 1991, the Black Hawk County Clerk of Court called my office and requested that we have a Notice of Garnishment served upon Defendant, Scott R. Spray, since he had not previously been served with said Notice and the garnished funds had been in the Clerk's office for 8 months without any activity being taken with regard to said amount.

10. That I then directed a Notice of Garnishment to be served on Defendant, Scott R. Spray, in order to process these funds that had been garnished prior to the filing of the bankruptcy by him and said Defendant was served on or about January 18, 1991, with this Notice of Garnishment.

11. That this service of the Notice of Garnishment was not a new garnishment or new proceeding against said Scott R. Spray, but simply to conclude the garnishment which had been started in April, 1990, and stopped in May, 1990, upon the filing of bankruptcy by said Defendant.

12. That neither I nor any other employee or agent of Credit Bureau Enterprises, Inc., had any notice or knowledge so far as the filing of the "Application for Rule to Show Cause" by the above named debtors, until receiving copies of the Judgment Entry and Proceeding Memo, both dated March 22, 1991.

13. That I personally have searched all appropriate files and records to see if a copy of the "Notice Setting Hearing on Application for Order to Show Cause", dated February 11, 1991, was ever received by anyone at Credit Bureau Enterprises, Inc., and I have been unable to locate any reference or indication that any such notice was ever received by our place of business.

14. That it is the standard operating procedure for Credit Bureau Enterprises, Inc., to appear and defend any such matter that might arise involving any allegations of incorrect procedure or wrong doing on the part of the Credit Bureau, especially when such allegation would concern a contempt of Court proceeding in the United States Bankruptcy Court.

Dated at Waterloo, Iowa, this 10 day of April, 1991.

Mike Joblinski
Mike Joblinski

Subscribed and sworn to before me this 10th day of April, 1991.

Lois M. Smith
Notary Public in and for the State of
Iowa.

Copy mailed to
filing attorney

APR 12 1991 *my*

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FILED
BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

APR 24 1991

BARBARA A. FURLEY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)	CHAPTER 7
)	
SCOTT RAY SPRAY)	BANKRUPTCY NO.:
DEBORAH LYNN SANDERS SPRAY)	L-90-00953W
Debtors.)	
)	RESISTANCE TO APPLICATION

COME NOW the Debtors, Scott Ray Spray and Deborah Lynn Sanders Spray and resist the Application by Credit Bureau Enterprises for the following:

1. That notification of Application For Rule To Show Cause was mailed to said Creditor on the 31st day of January, 1991.
2. That thereafter the matter was set for hearing and on February 11, 1991, notice was mailed from the Bankruptcy Court to all parties including the Creditor, Credit Bureau Enterprises.
3. That the hearing was set for the 20th day of March, 1991, and the Creditor had full knowledge of same and chose not to appear.
4. That the Application to Set Aside is untimely.
5. That the Application to Set Aside Entry of Judgement is without good cause.
6. That the Application should be dismissed at the Plaintiff's expense and if further hearing is permitted by the Court and said Application fails that the Creditor should be held responsible for further additional attorney fees for the Debtors.

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WHEREFORE, the Debtors, Scott Ray Spray and Deborah Lynn Sanders Spray, respectfully pray the Court deny the Application to set aside and dismiss same for the above stated reasons and for whatsoever the Court may deem just and proper in the premise.


Attorney for Debtors

PATTERSON LAW FIRM
616 Lafayette Street
P.O. Box 1181
Waterloo, Iowa 50704
Ph: 319-233-3333

CERTIFICATION OF MAILING

I hereby Certify that a copy of this Resistance was mailed on the date indicated below to all parties in interest therein, as required by the Bankruptcy Code and Rules, by the office of Stanford J. Patterson P. C.

Dated this 23rd day of April, 1991.



cc: Larry L. Anfinson, Attorney for Credit Bureau
Enterprises
Donna P. Lesyshen
U. S. Trustee

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

APR 25 1991

BARBARA A. EVERLY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

CHAPTER 7
BANKRUPTCY NO.

SCOTT RAY SPRAY
DEBORAH LYNN SANDERS SPRAY,

L90-00953W

Debtor(s),

Notice Setting Application to Set Aside
Entry of Judgment Against Credit Bureau Enterprises and
Resistance of Debtors

TO: Stanford Patterson, Attorney for Debtors;
Larry Anfinson, Attorney for Credit Bureau Enterprises;
U.S. Trustee;
Donna Lesyshen, Chapter 7 Trustee

NOTICE IS GIVEN the above matter will come before the Court for
hearing on:

May 22, 1991 at 11:30 A.M. in the

Bankruptcy Court Room 808, Chicago Central Bldg.,
E. 4th & Sycamore, WATERLOO, IOWA.

DATED April 25, 1991

BARBARA A. EVERLY
Clerk, Bankruptcy Court

by: *Miriam A. Solay*
Deputy Clerk
PO Box 74890
Cedar Rapids, IA 52407

Copies mailed to
parties above-named
this April 25, 1991 mg

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UNITED STATES BANKRUPTCY COURT -- NORTHERN DISTRICT OF IOWA
PROCEEDING MEMO

DATE: 5/22/91 Case No. L90-00953W Chapter 7 Adv.No. _____

DEBTOR: SCOTT RAY SRPAY AND DEBORAH LYNN SANDERS SPRAY Contested No. _____

APPEARANCES: For Plaintiff/Debtor Stan Patterson

or Defendant/Movant/Creditor Larry Anfinson

U.S. TRUSTEE _____ CASE TRUSTEE _____

NATURE OF PROCEEDING:

☐ Motion to Use Cash Collateral ☐ Objection to Exemptions/Lien Avoidance

☐ Disclosure Statement ☐ Pretrial/Scheduling Conference

☐ Confirmation of Plan ☐ Dischargeability/Discharge Complaint

☐ Motion to Dismiss ☐ Objection to Final Report/Claims Report

☐ Status Conference ☐ Motion to Assume/Reject

☐ Trial ☒ Other ☐ Notice setting Application to set aside

OUTCOME:

☐ Settled: Settlement documents to be submitted within 30 days or matter will be dismissed pursuant to Local Rule 13(D).

☐ Other: _____

ORDERS:

☐ Taken Under Advisement _____

☒ Briefs Due 15 days

☒ Judgment Entered by the Court pursuant to F.R.B.P. 9021:

*Motion to set aside judgment is granted.
Merits of the motion for violation of the
stay taken under advisement.*

IT IS SO ORDERED

Michael J. Melloy

U.S. Bankruptcy Judge

Copy to: Stanford J. Patterson; Donna P. Lesyshen; Larry L. Anfinson; U. S. Trustee & 2002 List: Robert W. Brinton this 5-23-91 ps

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